IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10332 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOK TEXTILES

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 10332 of 2000

MR TUSHAR MEHTA for Petitioner No. 1

..... for Respondent No. 1,3

MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 02/05/2002

ORAL JUDGEMENT

Rule. Mr.M.D.Pandya appears and waives service of rule on behalf of respondents. With the consent of parties matter is taken up for final hearing.

2. The short facts of the case are that the petitioner is having electricity supply of 20 H25 HP. On 31.12.99 the petitioner observed that there is some defect in the meter and therefore intimated to the Electricity Board. Thereafter, on 5.1.2000 the inspection was carried and it was found that the meter was running slow by 50% to 75%. Thereafter, the meter was sent for testing on 13.1.2000 and the testing report was also received. The petitioner was issued the supplementary bill amounting to Rs.2,74,930.69ps and against the said supplementary bill the petitioner approached this court.

3. Mr.Tushar Mehta appearing for the petitioner submitted that since the whole dispute was pertaining to the slow running of the meter, the authority for deciding the same is the Electrical Inspector and it is not open for the Electricity Board to decide the dispute itself and to issue supplementary bill for six months. Mr.Mehta also relied upon the judgment of the Apex Court in the matter of MPEB vs Smt.Basantibai reported in AIR 1988 SC 71. He submitted that there is no power or authority with the Electricity Board to issue supplementary bill and he further submitted that the bonafides of the petitioner are clear in as much as the petitioner himself intimated the Board that the meter is not running properly. But having found that there is dispute pertaining to the slowness of the meter it was required for the electricity Board to refer the dispute to the Electrical Inspector and the Board of its own could not have decided to recover the amount by supplementary bill.

4. On behalf of the respondent Board Mr.Pandya submitted that as a matter of fact the question of making reference would arise only if the dispute is raised by the petitioner. Mr.Pandya submitted that on 5.1.2000 when the inspection was carried out at that time petitioner was made to believe that supplementary bill will be issued, but however, he has not objected to the same. Mr.Pandya submitted that on 13.1.2000 when the meter was tested in the laboratory at that time also the petitioner has not objected to the same and therefore now when on the basis of laboratory testing report the bill is issued it can not be said that there is any dispute raised at the relevant point of time so as to make reference to the Electrical Inspector. Mr.Mehta submitted that when the laboratory testing report was submitted the petitioner on his own intimated to the Board regarding slow running of the meter and therefore it can not said that there is no dispute raised.

5. Having considered the rival contentions of the parties, I am of the view that the law is settled on the point that whenever dispute is pending regarding slow running of the meter or for improper functioning of the meter the authority competent to decide such dispute is the Electrical Inspector as per the provisions of the Indian Electricity Act. The Electricity Board is one of the party to such dispute and reference can also be made at the instance of the consumer or at the instance of the Board itself. The contention raised by Mr.Pandya is that at one point of time objection was not raised and therefore it can not be said to be a dispute when the supplementary bill is issued when the supplementary bill is issued the person concerned would know the real fact and consequences of slow running of the meter at that stage he can object the same because he would come to know about the consequences of slowness or defect of meter only when bill is received calling upon him to pay particular amount. At one stage also the person can legitimately raise a grievance. It does not mean that grievance can not be raised at the earlier point of time but at the same time merely because at the time of inspection objection was not raised it can not be said to be a valid ground for depriving the person concerned from raising any dispute for making reference to the Electrical Inspector. Therefore, I am of the view that in a matter like this petitioner can legitimately raise dispute for making reference to the Electrical Inspector and ultimately it will be the Electrical Inspector to decide the matter as per statutory requirement.

6. Considering the over all facts and circumstances of the case, I am of the opinion that the following directions would meet with the ends of justice:

(i) That the petitioner shall submit a detailed application which will be treated as a reference under section 26 of the Electricity Act for the meter in question. Such application shall be made within a period of three months from today.

(ii) After the reference application is received by the Electrical Inspector, the Electrical Inspector shall give an opportunity of hearing to the petitioner as well as to the respondent Board and shall decide the dispute in accordance with law within a period of three months from the date of receipt of application for reference.

(iii) It will be open for the Electrical Inspector to

consider the evidence including the evidence of original meter if available, laboratory testing report and other evidences, if any, produced by the petitioner or respondent-Board.

(iv) After the Electrical Inspector decides the matter the GEB shall issue revised bill as per the final order which will be passed by the Electrical Inspector.

Rule is made absolute to the aforesaid extent with no order as to costs.

2.5.2002 (JAYANT PATEL,J)